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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:)	
Robert W. Luffel, et al.)	
Serial No.:)	Confirmation No.: 1003
10/051,573)	
Filing Date:)	Examiner: Khoa H. Tran
01/17/2002)	
For:)	Group Art Unit: 3634
LOW PROFILE SUPPORT SYSTEM)	
FOR DEVICE RACK-MOUNTING)	
Docket No.:)	
10001582-5)	

CERTIFICATE OF EXPRESS MAILING

I hereby certify that the attached **Transmittal of Appeal Brief (in duplicate); Response to Notification of Non-Compliance (4 pages, in triplicate); Appeal Brief (26 pages including Appendix A (5 pages) and Appendix B (1 page) with three (3) references (in triplicate); and Post cards for return by the United States Patent and Trademark Office**, are all being deposited with the United States Postal Service addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, via Express Mail No. EV 175421509 US, on this 30th day of June 2003.

By: 
Bruce E. Dahl, Reg. No. 33,670

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	
)	
LUFFEL, Robert, W. <i>et al.</i>)	Examiner: Tran, Khoa, H.
)	
Serial No. 10/051,573)	Group Art Unit: 3634
)	
Filing Date: January 17, 2002)	Conf. No.: 1003
)	
For: LOW PROFILE SUPPORT SYSTEM)	Atty. Dkt.: 10001582-5
FOR DEVICE RACK-MOUNTING)	

APPEAL BRIEF

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of:)	
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LUFFEL, Robert, W., et al.)	Examiner: Tran, Khoa, H.
)	
Serial No. 09/742,964)	Group Art Unit: 3634
)	
Filing Date: December 5, 2000)	Conf. No.: 1003
)	
For: LOW PROFILE SUPPORT SYSTEM)	Atty. Dkt.: 10001582-5
FOR DEVICE RACK-MOUNTING)	

APPEAL BRIEF

To: The Commissioner of Patents and Trademarks
Washington, D.C. 20231

Sir:

This Appeal Brief is submitted in response to the final rejections of the claims dated November 4, 2002. A Notice of Appeal was filed on January 2, 2003.

REAL PARTY-IN-INTEREST

The assignee of the entire right, title, and interest in the patent application is Hewlett-Packard Company.

RELATED APPEALS AND INTERFERENCES

There are currently no related appeals or interferences known to Appellants, Appellants' legal representative, or the assignee which will directly affect, or be directly affected by, or have a bearing on, the Board's decision.

STATUS OF THE CLAIMS

Claims 1-21 are pending in the application. Claims 1-21 currently stand rejected. The rejections of claims 1-21 are appealed.

STATUS OF AMENDMENTS

No amendments were filed or entered subsequent to the final office action mailed on November 4, 2002.

SUMMARY OF INVENTION

This invention relates to rack-mount systems in general and more specifically, to a rack-mount storage system having a low profile device support structure. The invention as claimed is summarized below with reference to the independent claims which contain reference numerals and reference to the specification and drawings. All references are shown in the application at least where indicated herein.

(**Claim 1**) A rack-mount storage system (10, Figure 1; p. 5, ln. 4 - p. 20, ln. 25) (110, Figure 7; p. 20, ln. 26 - p. 21, ln. 5), comprising: An equipment cabinet (12, Figures 1, 5; p. 5, ln. 4 - p. 20, ln. 25) defining at least one device opening (14, Figure 1; p. 6, ln. 27 - p. 17, ln. 34) therein; a first device (16, Figures 1, 2, 3, 5, 6; p. 5, ln. 4 - p. 20, ln. 25; p. 21, ln. 6 - ln. 21) (116, Figure 7; p. 20, ln. 26 - p. 21, ln. 5) sized to be received by the device opening (14), said first device (16) defining a first mounting pathway (18, Figures 2, 5; p. 5, ln. 4 - p. 9, ln. 15; p. 14, ln. 4 - p. 16, ln. 1; p. 19, ln. 21 - p. 20, ln. 25; p. 21, ln. 6 - ln. 21) (118, Figure 7; p. 20, ln. 26 - p. 21, ln. 5) therein, said first device (16, 116) having a first chassis (48, Figures 1, 2, 3, 6; p. 5, ln. 23 - p. 6, ln. 11; p. 13, ln. 23 - p. 17, ln. 15) sized to receive at least one component of said first device (16, 116), at least a portion of said first chassis (48) defining at least a portion of said first mounting pathway (18, 118); and a support spar (20, Figures 1, 2, 5, 6; p. 5, ln. 4 - p. 12, ln. 1; p. 14, ln. 4 - p. 20, ln. 25) (120, Figure 7; p. 20, ln. 26 - p. 21, ln. 21) being sized to be received by the first mounting pathway (18, 118) and being sized to engage said equipment cabinet

(12), said support spar (20, 120) engaging the first mounting pathway (18, 118) and said equipment cabinet (12) to support said first device (16, 116) in said equipment cabinet (12).

(Claim 14) A rack-mount storage system (10, 110) having an equipment cabinet (12) and at least one device opening (14) therein, comprising: A first device (16, 116) sized to be received by the first device opening (14), said first device (16, 116) defining a first mounting pathway (18, 118) therein, said first device (16, 116) having a first chassis (48) sized to receive at least one component of said first device (16, 116), at least a portion of said first chassis (48) defining at least a portion of said first mounting pathway (18, 118); and a support spar (20, 120) being sized to be received by the first mounting pathway (18, 118) and being sized to engage said equipment cabinet (12), said support spar (20, 120) engaging the first mounting pathway (18, 118) and said equipment cabinet (12) to support said first device (16, 116) in said equipment cabinet (12).

(Claim 15) A rack-mount storage system (10, 110), comprising: Equipment cabinet means (e.g., 12) for defining at least one device opening (14) therein; device means (e.g., 16, 116) for defining at least one mounting pathway (18, 118) therein, said device means (e.g., 16, 116) having housing means (e.g., 48) for housing at least one component of said device means (e.g., 16, 116), said housing means (e.g., 48) defining at least a portion of said at least one mounting pathway (18, 118); and support means (e.g., 20, 120) for engaging said at least one mounting pathway (18, 118) defined by said device means (e.g., 16, 116) and for engaging said equipment cabinet means (e.g., 12), said support means (e.g., 20, 120) supporting said device means (e.g., 16, 116) within said at least one device opening (14) defined by said equipment cabinet means (e.g., 12).

(Claim 16) A rack-mount storage system (10, 110), comprising: An equipment cabinet (12) defining at least one device opening (14) therein; a first device (16, 116) sized to be received by the device opening (14), said first device (16, 116) having a chassis (48) sized to receive at least one

component of said first device (16, 116), a portion of the chassis (48) defining at least a portion of a first mounting pathway (18, 118); and a support spar (20, 120) sized to be received by the first mounting pathway (18, 118) and to engage said equipment cabinet (12), said support spar (20, 120) engaging the first mounting pathway (18, 118) and said equipment cabinet (12) to support said first device (16, 116) in said equipment cabinet (12).

ISSUES

1. Whether claims 1-21 are unpatentable under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention.
2. Whether claims 1, 9, 11 and 13-16 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Cherry, U.S. Patent No. 4,191,436 (Cherry).
3. Whether claims 1 - 4, 7-9, 11-19 and 21 are unpatentable under 35 U.S.C. §102(b) as being anticipated by Whiten *et al.*, U.S. Patent No. 5,806,417 (Whiten).
4. Whether claims 5, 6, 10 and 20 are unpatentable under 35 U.S.C. §103(a) as being obvious over Whiten as applied to claims 1-4, 7-9, 11-19 and 21, and further in view of Robertson *et al.*, U.S. Patent No. 5,788,091 (Robertson).

GROUPING OF THE CLAIMS

As among the rejections, none of the claims stand or fall together. Each claim is independently patentable as set forth in the ARGUMENT. As for each rejection, with respect to the Section 112, second paragraph rejections, claims 2-13 stand or fall with claim 1. Claims 14-16 are independently patentable as set forth in the ARGUMENT. Claims 17-21 stand or fall with claim 16. With respect to the Section 102(b) rejections based on Cherry, claim 9 stands or falls with claim 1. Claims 1, 11, and 13-16 are independently patentable, as set forth in the ARGUMENT. With respect to the Section 102(b) rejections based on Whiten, none of the claims stand or fall together. Each claim is independently patentable as set forth in the ARGUMENT. With respect to the Section 103(a) rejections, none of the

claims stand or fall together. Each claim is independently patentable as set forth in the ARGUMENT.

ARGUMENT

Opening Statement

The examiner's rejections under Section 112, second and sixth paragraphs are without merit in that the claims meet the requirements of the Section. The Cherry reference fails to disclose a rack-mount storage system that includes at least a support spar that extends substantially transversely between first and second sides of an equipment cabinet. Whiten fails to disclose a rack-mount storage system that includes at least a first device having a chassis sized to receive at least one component of the first device, as required by the claims. Therefore, neither Cherry nor Whiten anticipates the pending claims. With regard to the examiner's obviousness rejections, neither Whiten nor Robertson provide the suggestion or incentive required to modify them in the manner set forth by the pending claims. Accordingly, the examiner has failed to establish the required *prima-facie* case of anticipation and obviousness of the pending claims.

Appellants' Invention

A rack-mount storage system according to one embodiment of the present invention may comprise an equipment cabinet that defines at least one device opening therein. A first device sized to be received by the first device opening defines a first mounting pathway therein. The first device has a chassis that is sized to receive at least one component of the first device and that also defines at least a portion of the first mounting pathway. A support spar sized to be received by the first mounting pathway and being sized to engage said equipment cabinet and extend substantially between first and second sides of the equipment cabinet engages the first mounting pathway and the equipment cabinet to support said first device in the equipment cabinet. The invention as claimed is summarized below with reference numerals and reference to the specification and drawings. All references are shown in the application at least where indicated herein.

Background

Different types of rack-mount storage systems exist and are being used to mount single or multiple devices in equipment cabinets. For example, such systems are commonly used in research/laboratory settings to hold various types of test equipment such as signal generators, oscilloscopes, computers, etc.

A typical rack-mount storage system may include an equipment cabinet having a device opening therein and a support structure for supporting devices in that equipment cabinet. Commonly used support structures include shelves or platforms for holding the devices or rail systems for slidably receiving the devices. On some occasions, the devices may be mounted in the equipment cabinet prior to shipment. Therefore, the support structure must be designed to handle those situations in which a fully configured equipment cabinet is shipped. Stated differently, the support structure and cabinet must provide the structural strength and rigidity required to support the weight of the devices mounted in the equipment cabinet both at rest and during shipment.

Conserving and minimizing vertical height space is an important design criterion for rack-mount storage systems. Often, if not always, the more vertical height that is required to mount a device in an equipment cabinet, the more costly the rack-mount storage system is to the end-user. According to EIA (Electronic Industries Association), the applicable rack-mount standard for measuring vertical height space is ANSI/EIA RS-310-C. Under this standard, vertical height space is allocated in increments of 1.75" for the industry standard 19" rack-mount cabinet for electrical products. Obviously, vertical height space can quickly add up when using this incremental approach.

Partly in an effort to provide for the above-mentioned conditions, a rack-mount storage system has been developed in which a full-width shelf is used to support the weight of the devices. Since the shelf needs to have sufficient thickness to support the weight of the devices both at rest and during shipment, the shelf is usually provided with a substantial thickness which occupies valuable vertical height space. Thus, although rack-mount storage systems of this type do work and are currently being used, the continuing need to conserve valuable vertical height space places significant limitations on such

rack-mount storage systems.

In another effort in part to meet the above-mentioned conditions while conserving vertical height space, another rack-mount storage system has been developed. In this second rack-mount storage system, a first, usually half-width device is secured to a secondary component. The secondary component may comprise either a second device or a frame approximating the size of the second device. The secondary component bridges the gap between the mounted first (e.g., half-width) device and the opposite side of the equipment cabinet. The first device and secondary component are fastened to one another and are designed such that together they provide the necessary structural integrity to support the weight of the devices both at rest and during shipment. Although the foregoing arrangement may conserve vertical height space, rack-mount storage systems utilizing this secondary component method are not the most convenient and cost conscious approach. Indeed, this type of rack-mount storage system has numerous drawbacks. For example, by requiring the secondary component when only one device is to be installed, this system is impractical. Second, this rack-mount storage system requires the device chassis and the secondary component to possess sufficient strength to support the weight of the devices both at rest and during shipment. Third, this design requires the fastening method to possess significant structural strength. Fourth, this rack-mount storage system requires the first device to be unfastened from the secondary component, a rather cumbersome process, whenever a device is to be removed or installed. All of these drawbacks lead to increased costs and decreased convenience.

Consequently, a need exists for a rack-mount storage system having sufficient strength and rigidity to support the weight of a device or devices both at rest and during shipment. Ideally, the rack-mount storage system would support the device or devices mounted in the equipment cabinet yet require no additional vertical height space for structural support. If achieved, a shorter equipment cabinet might be selected which could not otherwise be used if additional vertical height space were necessary to mount the devices in that equipment cabinet. Alternatively, additional space might be available for mounting other devices in the equipment cabinet.

ISSUE 1: WHETHER CLAIMS 1-21 ARE INDEFINITE UNDER 35 U.S.C. §112, SECOND PARAGRAPH.

The examiner rejected claims 1 - 21 under 35 U.S.C. §112, second paragraph, stating that claims 1 and 14-16 “appear to be misleading or/and misdescriptive because the claims set forth the device and the chassis as two separate structures.” In addition, the examiner rejected claim 15 as failing to meet the requirements of Section 112, sixth paragraph. Each of these issues is addressed separately below.

With respect to the first issue (i.e., claims 1 and 14-16), the examiner has taken the position that these claims are “misleading or/and misdescriptive” because they set forth the device and chassis as two separate structures. The examiner’s rejections are without merit. While it is true that the claims at issue set forth the device and chassis as two separate structures, the specification and drawings also describe the device (e.g., 16 and 36) and the chassis (e.g., 48 and 79) as two separate structures (i.e., components). See, for example, Figures 2, 3, and 6 and the description at page 5, lines 27-31; page 13, lines 23-26; and page 18, lines 1-4. The examiner attempts to make much of the fact that in Figure 3 both reference numerals 16 and 48 point to the “same element.” See page 2 of the final office action, paper no. 5, dated November 4, 2002. This is an incorrect assessment. While the reference numerals 16 and 48 in Figure 3 point to different portions of the device 16, that is not the same as saying they are the “same element.” Reference numeral 16 points to the device 16, whereas reference numeral 48 points to the chassis of the device 16.

The examiner’s improper interpretation also ignores Figure 2, wherein these two numerals 16 and 48 also point to different portions of the illustrated structure. The drawings must be interpreted in light of the written description, which clearly describes these two structures as separate elements. Appellants would note also that if the examiner’s rationale were to be followed, other separate structural elements in Figure 2 (e.g., such as those identified by reference numerals 21, 22, 23, 24, and 27) could also be regarded as the “same element.” Clearly, this is not the interpretation that would be assigned by a person having ordinary skill in the art.

In supporting his rejections of claim 1 and 14-16, the examiner also takes the position that it is

unclear “what specific structure does the term ‘device’ requires? [sic].” The term “device” requires no specific structure because none is set forth in the claims at issue. As described in the specification, the device 16 may comprise any of a wide range of systems or components that may be mounted within the storage system 10. What is required is that the “device” (e.g., 16) be provided with a “chassis” (e.g., 48).

In summation, because claims 1 and 14-16 are directed to a structural configuration that is specifically described and shown in the specification and drawings, and because persons having ordinary skill in the art would readily understand that the claims are directed to apparatus wherein the device and chassis are two separate components, claims 1 and 14-16 are sufficiently definite as a matter of law.

Turning now to the second issue, the examiner has taken the position that claim 15 does not meet the requirements of Section 112, sixth paragraph, for means-plus-function claims. Appellants respectfully disagree. Each of the elements of claim 15 are recited as a “means for” performing some function. For example, “equipment cabinet means for defining at least one device opening” states an element i.e., the “equipment cabinet” as well as the function of the element: that of “defining at least one device opening.” Similarly, “device means for defining at least one mounting pathway therein. . .” also recites an element i.e., the “device” as well as the function of the element “defining at least one mounting pathway therein.”

In responding to the appellants’ arguments, the examiner argues that the term “for defining” is not sufficient in that it does not describe a “mechanical function.” See page 6 of the final office action, paper no. 5, dated November 2, 2002. This argument is not supported by law. Section 112, sixth paragraph, does not limit “means plus function” claims to only those claims wherein the function described is a “mechanical function.” Because claim 15 recites elements and defines those elements by the function they perform, claim 15 meets the requirements of Section 112, sixth paragraph.. Thus, the Section 112 rejection of claim 15 is improper and must be reversed.

ISSUE 2: WHETHER CLAIMS 1, 9, 11 and 13 - 16 ARE UNPATENTABLE UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY CHERRY.

Legal Standard For Rejecting Claims
Under 35 U.S.C. §102

The standard for lack of novelty, that is, for “anticipation,” under 35 U.S.C. Section 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986). Invalidity for anticipation requires that all of the elements and limitations of the claims be found within a single prior art reference. *Scripps Clinic & Research Foundation v. Genentech, Inc.* 18 U.S.P.Q.2d 1001 (Fed. Cir. 1991). Furthermore, functional language, preambles, and language in “whereby,” “thereby,” and “adapted to” clauses cannot be disregarded. *Pac-Tec, Inc. v. Amerace Corp.*, 14 U.S.P.Q.2d 1871 (Fed. Cir. 1990).

The Cherry Patent

The Cherry patent discloses a cabinet for use in a mobile vehicle having a frame 10 with at least one pair of opposed drawer suspension assemblies 20 each having an extensible runner 24 with a plurality of hooks (not numbered by Cherry), and a tray 40 with a horizontal bar 46 fixed to each end of the tray 40 in spaced relationship with the tray end. The bars 46 are engagable with the hooks to allow the tray 40 to be removably carried on the frame 10 as a drawer. A releasable latch holds the tray 40 in a closed position in the frame 10.

The Examiner’s Rejections

The examiner rejected claims 1, 9, 11, and 13-16 under 35 U.S.C. §102(b) as being anticipated by Cherry. These rejections are improper in that, contrary to the examiner’s assertions, Cherry fails to disclose a support spar that extends substantially transversely between first and second sides of an equipment cabinet. Therefore, Cherry cannot anticipate claims 1, 9, 11, and 13-16.

More specifically, each of claims 1, 9, 11, 13, 14, and 16 requires at least “a support spar” that extends “substantially transversely between first and second sides” of the equipment cabinet. In

supporting his rejections, the examiner has taken the position that Cherry's channels 16 are analogous to the support spar element of the claims. However, Cherry's channels 16 do not extend "substantially transversely between first and second sides" of the equipment cabinet. Instead, Cherry's channels extend from front to back on each side of Cherry's frame. Because Cherry does not meet at least this limitation, Cherry cannot anticipate any of claims 1, 9, 11, 13, 14, and 16.

Claim 15 requires at least "support spar means . . . for extending substantially transversely between first and second sides" of the equipment cabinet. Here again, at least because Cherry's channels 16 do not extend "substantially transversely between first and second sides" of the equipment cabinet, Cherry cannot anticipate claim 15.

Dependent claim 11 is also independently allowable because Cherry fails to disclose a rack-mount storage system having "a second device, said second device defining a second mounting pathway therein sized to receive said support spar, said second device having a second chassis sized to receive at least one component of said second device, at least a portion of said second chassis defining at least a portion of said second mounting pathway, said second device being mounted adjacent said first device so that said first and second devices extend between the first and second sides of the device opening," as required by claim 11.

Dependent claim 13 is also independently allowable in that Cherry fails to disclose a rack-mount storage system "wherein the second mounting pathway is substantially aligned with the first mounting pathway when said first and second devices are positioned adjacent one another," as required by claim 13.

ISSUE 3: . . . WHETHER CLAIMS 1-4, 7-9, 11-19, AND 21 ARE UNPATENTABLE UNDER 35 U.S.C. §102(b) AS BEING ANTICIPATED BY WHITEN.

The Whiten Patent

The Whiten patent is directed to a shelf mounting assembly 18 for dispensing bottles. The shelf mounting assembly 18 includes front and rear opposed uprights 20 and 22 and an adapter member 40 on

which a shelf 16 is mounted. Each upright 20 and 22 is provided with a plurality of vertically-spaced engaging slots 24. The adapter member 40 extends between the uprights 20, 22 and is connected to the same by one or more of the engaging slots 24 of each upright 20, 22. The adapter member 40 includes a shelf-mounting flange 44 for detachably and movably connecting the shelf 16 to the adapter member 40 so that the shelf 16 may be mountable at different positions along the adapter member 40.

The Examiner's Rejections

The examiner rejected claims 1-4, 7-9, 11-19, and 21 under Section 102(b) as being anticipated by Whiten. The examiner's rejections are improper in that Whiten fails to disclose at least "a first device having a chassis sized to receive at least one component of said first device" as is specifically required by claims 1-4, 7-9, 11-14, 16-19, and 21. In supporting his rejections, the examiner has taken the position that Whiten's tracks 58 are "devices." However, Whiten's tracks 58 do not have a "chassis that is sized to receive at least one component of said first device." Because Whiten's tracks 58 do not meet the specific limitations of the "device" recited in the claims, Whiten cannot anticipate any of claims 1-4, 7-9, 11-14, 16-19, and 21.

Claim 15 requires that "said device means" have "housing means for housing at least one component of said device means." Here again, Whiten does not meet this limitation. That is, Whiten's tracks 58 do not include "housing means for housing at least one component of said device means," as specifically required by claim 15. Therefore, Whiten cannot anticipate claim 15 and the rejection must be withdrawn.

Dependent claim 2 is also independently allowable in that Whiten does not disclose a rack-mount storage system wherein "said first chassis comprises a channel member therein, a top surface and a bottom surface, and wherein the first mounting pathway is defined by said channel member and the bottom surface of said first chassis so that when said support spar is received by the first mounting pathway, said support spar does not extend downwardly beyond the bottom surface of said first chassis," as specifically required by claim 2. That is, because Whiten does not disclose a "chassis" within the

meaning of the claims, Whiten cannot be said to disclose the additional chassis limitations required by claim 2.

Dependent claim 3 is also independently allowable in that Whiten fails to disclose a rack-mount storage system wherein “said first chassis comprises a channel member therein, a top surface and a bottom surface, and wherein the first mounting pathway is defined by said channel member and the top surface of said first chassis so that when said support spar is received by the first mounting pathway, said support spar does not extend upwardly beyond the top surface of said first chassis,” as required by claim 3. Again, because Whiten fails to disclose a chassis, Whiten cannot, by definition, meet the additional limitations of claim 3.

Dependent claim 4 is also independently allowable in that Whiten fails to disclose a rack-mount storage system wherein “said first device includes a fore-to-aft center of gravity location and wherein the first mounting pathway is located at about the fore-to-aft center of gravity location,” as required by claim 4. Whiten is completely silent as to centers of gravity, and teaches nothing about where to locate the fore-to-aft center of gravity with respect to a mounting pathway.

Dependent claim 7 is also independently allowable because Whiten does not disclose a rack-mount storage system wherein “said support spar engages the first and second sides of said equipment cabinet,” as required by claim 7. Whiten’s cross members 54 engage adapter members 40, not the first and second sides of the equipment cabinet. See for example, Whiten at col. 4, lines 35 and 36.

Dependent claim 8 is also independently allowable because Whiten fails to disclose a rack-mount storage system wherein “the first side of said equipment cabinet includes a first mounting rail and wherein the second side of said equipment cabinet includes a second mounting rail, said support spar being sized to engage the first and second mounting rails.” Whiten’s adapter members 40 are not mounting rails, as required by claim 8.

Dependent claim 9 is also independently allowable in that Whiten fails to disclose a rack-mount storage system wherein “the device opening has a first side and a second side separated by a spaced distance and wherein said first device has a width that is less than the spaced distance between the first

and second sides of the device opening.” Whiten discloses no device having a chassis, thus cannot meet the additional requirements of claim 9.

Dependent claim 11 is also independently allowable because Whiten fails to disclose a rack-mount storage system further comprising “a second device, said second device defining a second mounting pathway therein sized to receive said support spar, said second device having a second chassis sized to receive at least one component of said second device, at least a portion of said second chassis defining at least a portion of said second mounting pathway, said second device being mounted adjacent said first device so that said first and second devices extend between the first and second sides of the device opening,” as required by claim 11. Whiten discloses no device having a chassis, thus cannot meet the additional limitations of claim 11.

Dependent claim 12 is also independently allowable in that Whiten does not disclose a rack-mount storage system “wherein said first device is secured to said second device.” Whiten discloses no devices within the meanings of the claims, thus cannot be said to meet the additional limitations of claim 12, which require the first device to be secured to the second device.

Dependent claim 13 is also independently allowable because Whiten does not disclose a rack-mount storage system wherein “the second mounting pathway is substantially aligned with the first mounting pathway when said first and second devices are positioned adjacent one another,” as specifically required by claim 13. Whiten discloses no device having a chassis within the meaning of the claims, and also fails to disclose a second device having a second mounting pathway that meets the limitations of claim 13.

Dependent claim 17 is independently allowable because Whiten fails to disclose a rack-mount storage system wherein “said first mounting pathway is located in said chassis so that said support spar does not extend downwardly beyond a bottom surface of said first device when said support spar is supporting said first device within said equipment cabinet,” as specifically required by claim 17. Whiten contains no device having a first mounting pathway in a chassis, much less a device that meets these additional limitations.

Dependent claim 18 is independently allowable because Whiten does not disclose a rack-mount storage system wherein “said first mounting pathway is located in said chassis so that said support spar does not extend upwardly beyond a top surface of said first device when said support spar is supporting said first device within said equipment cabinet,” as set forth in claim 18. Again, Whiten discloses no device having a first mounting pathway in a chassis, much less a device that meets the additional limitations of claim 18.

Dependent claim 19 is independently allowable in that Whiten fails to disclose a rack-mount storage system wherein “said first device includes a fore-to-aft center of gravity location and wherein said first mounting pathway is located at about the fore-to-aft center of gravity location,” as set forth in claim 19. Whiten makes no mention of centers of gravity, much less a disclosure of any structure that meets these additional limitations of claim 19.

Dependent claim 21 is independently allowable in that Whiten does not disclose a rack-mount storage system wherein the device opening defined by “said equipment cabinet includes a first side and a second side separated by a spaced distance and wherein said first device has a width that is less than the spaced distance between the first and second sides of said device opening, said rack-mount storage system further comprising a second device having a chassis sized to receive at least one component of said second device, a portion of the chassis defining at least a portion of a second mounting pathway, said second device being mounted adjacent said first device and engaging said support spar so that said first and second devices extend between the first and second sides of the device opening,” as required by claim 21. Whiten does not disclose a device having a chassis that defines a mounting pathway within the meaning of the claims, thus cannot be said to disclose the arrangement required by claim 21 wherein first and second devices are mounted adjacent one another within the device opening.

ISSUE 4: WHETHER CLAIMS 5, 6, 10 AND 20 ARE UNPATENTABLE UNDER 35 U.S.C. §103(a) AS BEING OBVIOUS OVER WHITEN AND FURTHER IN VIEW OF ROBERTSON.

Legal Standard For Rejecting Claims
Under 35 U.S.C. §103

The test for obviousness under 35 U.S.C. §103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. *In re Donovan*, 184 USPQ 414, 420, n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. *In re Rinehart*, 189 USPQ 143, 146 (CCPA 1976). All limitations of the claims must be considered. *In re Boe*, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of appellants' teachings. *In re Meng*, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a Section 103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. *In re Lintner*, 173 USPQ 560, 562 (CCPA 1972).

A basic mandate inherent in Section 103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art. *In re Kamm*, 172 USPQ 298, 301-302 (CCPA 1972). Put somewhat differently, the fact that the inventions of the references and of the appellant may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references to attempt to fashion appellants' claimed invention. *In re Donovan, supra*, at 420.

In the case of *In re Wright*, 6 USPQ2d 1959 (Fed. Cir. 1988) (restricted on other grounds by *In re Dillon*, 16 USPQ2d 1897 (Fed. Cir. 1990)), the Court of Appeals for the Federal Circuit decided that the Patent Office had improperly combined references which did not suggest the properties and results of the appellants' invention nor suggest the claimed combination as a solution to the problem which appellants' invention solved. The CAFC reached this conclusion after an analysis of the prior case law, at p. 1961:

“We repeat the mandate of 35 U.S.C. § 103: it is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties, and the problem it solves. See, e.g., *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 1025, 226 USPQ 881, 886 (Fed. Cir. 1985) (“In evaluating obviousness, the hypothetical person of ordinary skill in the pertinent art is presumed to have the ‘ability to select and utilize knowledge from other arts reasonably pertinent to [the] particular problem’ to which the invention is directed”), quoting *In re Angle*, 444 F.2d 1168, 1171-72, 170 USPQ 285, 287-88 (CCPA 1971); *In re Antonie*, 559 F.2d 618, 619, 195 USPQ 6, 8 (CCPA 1977) (“In delineating the invention as a whole, we look not only at the claim in question... but also to those properties of the subject matter which are inherent in the subject matter **and** are disclosed in the Specification”) (emphasis in original).

The determination of whether a novel structure is or is not “obvious” requires cognizance of the properties of that structure and the problem which it solves, viewed in light of the teachings of the prior art. See, e.g., *In re Rinehart*, 531 F.2d 1048, 1054, 189 USPQ 143, 149 (CCPA 1976) (the particular problem facing the inventor must be considered in determining obviousness); see also *Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co.*, 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984) (it is error to focus “solely on the product created, rather than on the obviousness or notoriousness of its creation”) (quoting *General Motors Corp. v. U.S. Int’l Trade Comm’n*, 687 F.2d 476, 483, 215 USPQ 484, 489 (CCPA 1982), cert. denied, 459 U.S. 1105 (1983)).

Thus the question is whether what the inventor did would have been obvious to one of ordinary skill in the art attempting to solve the problem upon which the inventor was working. *Rinehart*, 531 F.2d at 1054, 189 USPQ at 149; see also *In re Benno*, 768 F.2d 1340, 1345, 226 USPQ 683, 687 (Fed. Cir. 1985) (“applicant’s problem” and the prior art present different problems requiring different solutions”).

More recently, the CAFC has reiterated the necessity that motivation be identified in choosing to combine prior art references for an obviousness type rejection. As stated by the Court of Appeals for the Federal Circuit in *In re Rouffet*, 47 USPQ2d 1453 (Fed. Cir. 1998) at 1457:

“[V]irtually all [inventions] are combinations of old elements.” *Environmental Designs, Ltd. V. Union Oil Co.*, 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed.Cir. 1983)(“Most, if not all, inventions are combinations and mostly of old elements.”). Therefore an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be “an illogical and inappropriate process by which to determine patentability.” *Sensonics, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570, 38 USPQ2d 1551, 1554 (Fed.Cir. 1996).

To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. In other words, the examiner must show

reasons that the skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the elements from the cited prior art references for combination in the manner claimed.”

A reference which teaches away from the appellants’ invention may not properly be used in framing a 35 U.S.C. §103 rejection of appellants’ claims. See *United States v. Adams*, 148 USPQ 429 (1966).

The Examiner’s Rejections

The examiner rejected claims 5, 6, 10, and 20 under 35 U.S.C. §103(a) as being obvious over Whiten and Robertson for the reasons stated in the final office action. The examiner’s rejections are improper in that neither reference provides the suggestion or incentive required to combine the references in a manner that would make obvious the pending claims.

The Whiten patent is directed to a shelf-mounting assembly for dispensing bottles. Robertson discloses a bottle-dispensing system having an attraction device 160 that is activated when the bottles are removed. The attraction device 160 includes a sound generator, a light emitter, a scent emitter, and/or a mechanical movement device to attract attention to the dispensing system when in use. Presumably, both devices (i.e., those disclosed by Whiten and Robertson) are effective and functional for their intended purposes. Therefore, there is no need, thus no suggestion or incentive, to combine them together. Stated another way, neither reference provides the motivation required to pick and choose certain elements from each reference and combine them together in the manner described by the currently-pending claims.

With regard to claim 5, even if it were proper to combine Robertson and Whiten, the resulting combination still would not meet the limitations in claim 5 which require, by virtue of its dependency from claim 1, that the device have a “first chassis sized to receive at least one component of said first device.” Therefore, any combination of Robertson and Whiten cannot make obvious claim 5.

With regard to claim 6, Robertson does not disclose a “curved support spar” having a center that

is higher than the two ends. While the examiner takes the position that Robertson's outer round tube 46 makes the center of Robertson's transverse member 26 higher than the ends, this is not the same as a "curved support spar" recited in claim 6. Therefore, even if Robertson and Whiten were combined, the resulting combination still would not meet this limitation of claim 6. Claim 6 is not obvious over Robertson and Whiten.

In addition, while Robertson discloses an outer round tube 46, the purpose of the outer round tube 46 is to provide the transverse member 26 with a telescoping function so that the transverse member 26 may be used on racks having different front post distances. See, col. 4, lines 65-67 of Robertson. This is not the same as the sleeve recited in claim 10 which provides a spacing function to hold the "first device against the first side of the device opening," as required by claims 10 and 20. Therefore, claims 10 and 20 are not made obvious by Robertson and Whiten.

The case of *In re Fritch*, 23 USPQ2d 1780 (Fed. Cir. 1992) is instructive as to the obviousness issues in the currently-pending application. In reversing the rejections of the patent examiner and the Board of Patent Appeals and Interferences, the Federal Circuit stated that it was not sufficient that the various prior art references disclosed the various elements of the claimed device, or even that it would be possible to combine the various elements in the manner of the claimed invention. Rather, the court reiterated that:

"Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of the references can be combined *only* if there is some suggestion to do so. Although couched in terms of combining teachings found in the prior art, the same inquiry must be carried out in the context of a purported obvious 'modification' of the prior art. The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *Id.* at 1783. (Emphasis in original, citations omitted).

The holding of *Fritch, supra*, is dispositive of the obviousness issues in this case. That is, *Fritch* compels a finding of non-obviousness where, as here, the prior art does not suggest the desirability of any modification or combination that would make obvious the currently-pending claims. Stated another

way, even if Whiten and Robertson could be modified to make obvious the currently-pending claims, these references still cannot make obvious the currently-pending claims since neither reference taken alone or together, suggests the desirability of the modifications. Therefore, claims 5, 6, 10, and 20 are not made obvious by Whiten and Robertson.

CONCLUSION

The pending claims satisfy the requirements of Section 112, second and sixth paragraphs, thus are allowable over Section 112. The Cherry reference fails to disclose a rack-mount storage system that includes at least a support spar that extends substantially transversely between first and second sides of an equipment cabinet. The Whiten reference fails to disclose a rack-mount storage system that includes at least a first device having a chassis that is sized to receive at least one component of the first device, as required by the pending claims. Therefore, neither Cherry nor Whiten anticipates the pending claims. Further, the examiner has failed to establish the required *prima-facie* showing of obviousness of the pending claims in that neither Whiten nor Robertson provide the suggestion or incentive required to modify either of their various elements in the manners required by the pending claims. As the examiner has failed to establish the required *prima-facie* cases of anticipation and obviousness, Appellants respectfully request the Board to reverse the rejections of claims 1-21.

Respectfully submitted,

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APPENDIX A

1. A rack-mount storage system, comprising:

an equipment cabinet having a first side and a second side, said equipment cabinet defining at least one device opening therein;

a first device sized to be received by the device opening, said first device defining a first mounting pathway therein, said first device having a first chassis sized to receive at least one component of said first device, at least a portion of said first chassis defining at least a portion of said first mounting pathway; and

a support spar being sized to be received by the first mounting pathway and being sized to engage said equipment cabinet, said support spar engaging the first mounting pathway and said equipment cabinet, said support spar extending substantially transversely between the first and second sides of said equipment cabinet to support said first device in said equipment cabinet.

2. The rack-mount storage system of claim 1, wherein said first chassis comprises a channel member therein, a top surface and a bottom surface, and wherein the first mounting pathway is defined by said channel member and the bottom surface of said first chassis so that when said support spar is received by the first mounting pathway, said support spar does not extend downwardly beyond the bottom surface of said first chassis.

3. The rack-mount storage system of claim 1, wherein said first chassis comprises a channel member therein, a top surface and a bottom surface, and wherein the first mounting pathway is defined by said channel member and the top surface of said first chassis so that when said support spar is received by the first mounting pathway, said support spar does not extend upwardly beyond the top surface of said first chassis.

4. The rack-mount storage system of claim 1, wherein said first device includes a fore-to-aft center of gravity location and wherein the first mounting pathway is located at about the fore-to-aft center of gravity location.

5. The rack-mount storage system of claim 1, wherein said support spar is aluminum and includes a generally rectangular and tubular cross section.

6. The rack-mount storage system of claim 1, wherein said support spar includes a first end, a second end and a center, said support spar being curved such that the center of said support spar is higher than its first and second ends while said support spar is engaging the first mounting pathway and said equipment cabinet.

7. The rack-mount storage system of claim 1, wherein said support spar engages the first and second sides of said equipment cabinet.

8. The rack-mount storage system of claim 7, wherein the first side of said equipment cabinet includes a first mounting rail and wherein the second side of said equipment cabinet includes a second mounting rail, said support spar being sized to engage the first and second mounting rails.

9. The rack-mount storage system of claim 1, wherein the device opening has a first side and a second side separated by a spaced distance and wherein said first device has a width that is less than the spaced distance between the first and second sides of the device opening.

10. The rack-mount storage system of claim 9, further comprising a spacer sleeve sized to be received over said support spar, said spacer sleeve extending between said first device and the second side of the device opening, said spacer sleeve holding said first device against the first side of the device

opening.

11. The rack-mount storage system of claim 9, further comprising a second device, said second device defining a second mounting pathway therein sized to receive said support spar, said second device having a second chassis sized to receive at least one component of said second device, at least a portion of said second chassis defining at least a portion of said second mounting pathway, said second device being mounted adjacent said first device so that said first and second devices extend between the first and second sides of the device opening.

12. The rack-mount storage system of claim 11, wherein said first device is secured to said second device.

13. The rack-mount storage system of claim 11, wherein the second mounting pathway is substantially aligned with the first mounting pathway when said first and second devices are positioned adjacent one another.

14. A rack-mount storage system having an equipment cabinet and at least one device opening therein, comprising:

a first device sized to be received by the first device opening, said first device defining a first mounting pathway therein, said first device having a first chassis sized to receive at least one component of said first device, at least a portion of said first chassis defining at least a portion of said first mounting pathway; and

a support spar being sized to be received by the first mounting pathway and being sized to engage said equipment cabinet, said support spar engaging the first mounting pathway and said equipment cabinet, said support spar extending substantially transversely between first and second sides of said equipment cabinet to support said first device in said equipment cabinet.

15. A rack-mount storage system, comprising:

equipment cabinet means for defining at least one device opening therein;

device means for defining at least one mounting pathway therein, said device means having housing means for housing at least one component of said device means, said housing means defining at least a portion of said at least one mounting pathway; and

support means for engaging said at least one mounting pathway defined by said device means, for engaging said equipment cabinet means, and for extending substantially transversely between first and second sides of said equipment cabinet, said support means supporting said device means within said at least one device opening defined by said equipment cabinet means.

16. A rack-mount storage system, comprising:

an equipment cabinet having a first side and a second side, said equipment cabinet defining at least one device opening therein;

a first device sized to be received by the device opening, said first device having a chassis sized to receive at least one component of said first device, a portion of the chassis defining at least a portion of a first mounting pathway; and

a support spar sized to be received by the first mounting pathway and to engage said equipment cabinet, said support spar engaging the first mounting pathway and said equipment cabinet, said support spar extending substantially transversely between the first and second sides of said equipment cabinet to support said first device in said equipment cabinet.

17. The rack-mount storage system of claim 16, wherein said first mounting pathway is located in said chassis so that said support spar does not extend downwardly beyond a bottom surface of said first device when said support spar is supporting said first device within said equipment cabinet.

18. The rack-mount storage system of claim 16, wherein said first mounting pathway is

located in said chassis so that said support spar does not extend upwardly beyond a top surface of said first device when said support spar is supporting said first device within said equipment cabinet.

19. The rack-mount storage system of claim 16, wherein said first device includes a fore-to-aft center of gravity location and wherein said first mounting pathway is located at about the fore-to-aft center of gravity location.

20. The rack-mount storage system of claim 16, wherein the device opening defined by said equipment cabinet includes a first side and a second side separated by a spaced distance and wherein said first device has a width that is less than the spaced distance between the first and second sides of said device opening, said rack-mount storage system further comprising a spacer sleeve sized to be received by said support spar, said spacer sleeve extending between said first device and the second side of the device opening, said spacer sleeve holding said first device against the first side of the device opening.

21. The rack-mount storage system of claim 16, wherein the device opening defined by said equipment cabinet includes a first side and a second side separated by a spaced distance and wherein said first device has a width that is less than the spaced distance between the first and second sides of said device opening, said rack-mount storage system further comprising a second device having a chassis sized to receive at least one component of said second device, a portion of the chassis defining at least a portion of a second mounting pathway, said second device being mounted adjacent said first device and engaging said support spar so that said first and second devices extend between the first and second sides of the device opening.

APPENDIX B

References Relied on By Examiner in his Final Response.

Copies of the following references are attached hereto for the Board's convenience:

1. U.S. Patent No. 4,191,436, "Cabinet For Use In Mobile Vehicle," of Cherry.
2. U.S. Patent No. 5,806,417, "Shelf-Mounting Assembly," of Whiten, *et al.*.
3. U.S. Patent No. 5,788,091, "Article-Dispensing System Having An Attraction Device," of Robertson, *et al.*